

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
THIRD REGION**

**PALMER FISH CO., INC.  
d/b/a PALMER FOOD SERVICES<sup>1</sup>**

Employer

**and**

**Case 3-RC-11630**

**INTERNATIONAL BROTHERHOOD  
OF TEAMSTERS, LOCAL 791**

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

Pursuant to Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated that Palmer Fish Co., Inc. d/b/a Palmer Food Services, hereinafter referred to as the Employer, is a corporation with an office and place of business located in Rochester, New York, where it is engaged in the business of broadline food service distribution. Annually, the Employer, in conducting its business operations, purchases and receives goods valued in excess of \$50,000, directly from points located outside the State of New

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<sup>1</sup> The Employer's name appears as amended at the hearing.

York. Based on the parties' stipulation and the record as a whole, I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The parties stipulated, and I find, that International Brotherhood of Teamsters, Local 791, hereinafter referred to as the Petitioner, is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The petition seeks an election in a bargaining unit comprised of all drivers employed by the Employer at its Rochester, New York facility; excluding all other employees.

At the hearing, the parties stipulated that distribution manager Robert Brownwell, warehouse manager Chris Weidemann, and meat department manager Joe Costello should be excluded from the bargaining unit, because they are supervisors as defined in Section 2(11) of the Act, with the authority to hire employees. Based on the parties' stipulation, and the record as a whole, I shall exclude these job classifications from the bargaining unit found appropriate herein.

At the hearing, the parties also stipulated that employees working in the Employer's fish department and retail department should be excluded from the bargaining unit. Based on the parties' stipulation, and the record as a whole, which indicates these employees do not share a community of interest with the employees in the petitioned-for unit, I shall exclude these job classifications from the bargaining unit found appropriate herein.

At issue is whether warehouse department employees and meat department employees should be included in the bargaining unit, as urged by the Employer. The Petitioner takes the

position that these job classifications should be excluded from the bargaining unit because they do not share a community of interest with the employees in the petitioned-for unit. The Employer argues that these job classifications should be included in the bargaining unit because they share a sufficient community of interest with other employees in the unit.

Based on the evidence adduced during the hearing and the relevant case law, I conclude that employees in the warehouse department and meat department should be excluded from the appropriate bargaining unit found herein, as they do not share a community of interest with the employees in the petitioned-for bargaining unit. Thus, I conclude that the petitioned-for unit of drivers is an appropriate unit and I shall direct an election in that unit.

### **FACTS**

The Employer operates a warehouse facility in Rochester, New York, where it distributes food service products to customers such as restaurants, hospitals, schools and various other institutions. Products distributed to its customers include fresh and frozen foods, protein and dairy products, beverages, and equipment and supplies for restaurants. The Employer's facility is a single-location, 100,000 square-foot warehouse that consists of a 30,000 square-foot area for dry product storage, a 20,000 square-foot area for cooler storage, a 10,000 square-foot area for frozen food storage, a 1,500 square-foot area for the Employer's retail store, additional square footage for the Employer's office area, 9 shipping docks and 3 receiving docks.

The Employer's warehouse consists of several departments, including distribution, warehouse, meat, fish and retail. Each of these departments are staffed with employees who report to a department manager. Each department manager reports directly to Jack Whittier, the Employer's general manager and vice-president of operations.<sup>2</sup>

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<sup>2</sup> As noted above, pursuant to a stipulation by the parties, employees working in the fish and retail departments are excluded from the bargaining unit found appropriate herein.

The distribution department consists of distribution manager Robert Brownwell and 21 drivers. At the hearing, William Stein, the Employer's vice-president of human resources, testified that Brownwell is responsible for hiring drivers for the distribution department, in addition to scheduling vacations and completing evaluations for all drivers. Stein also testified that Brownwell does not share these job responsibilities, relating to drivers, with any other department manager. Brownwell also conducts department meetings which are attended only by the employees in the distribution department.

Drivers are responsible for the delivery of all products to the Employer's customers. All drivers work on the day shift, which starts at approximately 6:00 a.m. and continues until all deliveries are made, sometimes lasting 10 hours. All drivers are required to maintain a commercial driver's license and a Department of Transportation certification.

Stein testified that trucks are loaded by warehouse employees usually before drivers arrive to work in the morning. There are times when an ordered product has not been loaded onto a truck.<sup>3</sup> In these instances, Stein testified that drivers are prohibited from going into the warehouse to load the ordered product onto their truck. This job duty is reserved for warehouse employees. Drivers are also prohibited from entering an area inside the warehouse where returned items are brought back after delivery and stored.

Driver Stephen Sepe testified that drivers generally spend 45 minutes to an hour at the warehouse waiting for warehouse employees to finish loading their trucks.<sup>4</sup> The remainder of the day drivers are on the road making deliveries. Drivers are also responsible for completing invoices and paperwork upon delivery of products to customers. Drivers may also be asked to collect money from customers for payment of the delivered products. At the hearing, Whittier

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<sup>3</sup> The record refers to these missing products as "shorts."

<sup>4</sup> The record does not reflect how often trucks are missing products in the morning.

testified that if problems arise during a driver's route, the driver is directed to contact the distribution office and speak directly to distribution manager Brownwell.

The warehouse department consists of warehouse manager Chris Weidemann and 35 warehouse employees.<sup>5</sup> Weidemann is responsible for hiring warehouse employees, scheduling their vacations and completing evaluations for all warehouse employees. Weidemann also conducts department meetings which are attended solely by warehouse employees.

Warehouse employees are responsible for receiving and stocking new products, and for loading these products onto trucks for shipping to the customers. The warehouse department operates on a 24-hour basis with warehouse employees working one of three shifts. Warehouse employees are required to maintain a license that allows them to operate a pick or an overhead forklift.<sup>6</sup> However, unlike drivers, warehouse employees are not required to maintain a commercial driver's license or a certification from the Department of Transportation. Warehouse employees do not have contact with customers.

There is some record testimony that warehouse employees have contact with drivers. For example, Whittier testified that warehouse employees work with drivers during mornings when there are missing products from the trucks. Whittier also testified that, on occasion, warehouse employees will ride along with drivers when someone is needed to assist the driver. However, Whittier did not identify how the warehouse employees work with the drivers or the extent of the contact between drivers and warehouse employees relating to missing products in the morning or how often warehouse employees ride with drivers. Stephen Sepe, a driver for the Employer for the last three years, testified that he does not communicate directly with warehouse employees regarding missing products for his truck. While Whittier did not testify regarding the frequency of "ride- alongs," Sepe testified that he has observed warehouse employees riding with drivers

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<sup>5</sup> The record does not identify specific job classifications within the warehouse department.

<sup>6</sup> Drivers are not required to maintain a license for picks or overhead forklifts.

only two or three times within the last six months, and that the warehouse employee rode with the driver in order to assist the driver with unloading the truck, due to an injury to the driver. There is no record evidence that warehouse employees drive the trucks when they ride along with drivers.

Whittier also testified that two drivers, within the last two to three years, have permanently transferred to the warehouse department. However, Whittier testified that both of these drivers could no longer drive for the Employer, pursuant to the Employer's accident policy. There is no record evidence that any warehouse employee has permanently transferred to the distribution department as a driver.

Whittier further testified that, on occasion, warehouse manager Weidemann has driven trucks temporarily, while other warehouse employees have driven trucks that do not require the driver to have a commercial driver's license.<sup>7</sup> However, there is no record testimony showing how often this occurs or for what purpose.

The meat department consists of the meat manager Joe Costello and 15 employees. Costello is responsible for hiring employees within his department, along with scheduling work hours and vacations, approving overtime and completing evaluations for his department employees. Costello also conducts department meetings solely with the meat department employees.

Meat department employees are primarily responsible for cutting meat and storing the meat in coolers and freezers. All meat department employees work on the day shift, similar to drivers. However, unlike drivers, they are not required to maintain a commercial driver's license or a Department of Transportation certification. Meat department employees also do not collect money from customers, and do not complete inventories.

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<sup>7</sup> As noted above, Weidemann is excluded from the bargaining unit found herein because of his supervisory status.

There is no record evidence of any interchange between drivers and employees in the meat department. There is also no evidence of daily contact between drivers and the meat department employees. Meat department employees wear uniforms in accordance with FDA regulations, which drivers are not required to wear.

The record shows that drivers share a number of common benefits, terms, and conditions of employment with the Employer's other employees, such as the same medical benefits, dental benefits, life insurance, vacation, holiday, personal leave benefits and 401(k) plan. The Employer's employment policies apply to all employees. The pay range for drivers is between \$11.50 and \$15.00 per hour, and the pay range for employees working in the warehouse and meat departments is between \$9.00 and \$15.00 per hour. All employees punch a time clock, are paid hourly and use the same break room and lockers.

### **ANALYSIS**

The Employer contends that the warehouse department and meat department employees should be included in the bargaining unit because they share a community of interest with the petitioned-for employees. The Petitioner disagrees and seeks to exclude these job classifications in the unit found appropriate.

Resolution of unit composition issues begin with an examination of the petitioned-for unit. If it is appropriate, the inquiry ends. See Bartlett Collins Co., 334 NLRB 484 (2001). In determining the threshold issue of appropriateness, the Board is guided by the principle that it need endorse only an appropriate unit, not the most appropriate unit. See Home Depot USA, 331 NLRB 1289 (2000); Overnite Transportation Co., 322 NLRB 723 (1996). A union is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate unit compatible with that requested does not exist." P. Ballantine & Sons, 141 NLRB 1103, 1107 (1963); Bamberger's Paramus, etc., 151 NLRB 748, 751 (1965); Purity Food

Stores, Inc., 160 NLRB 651 (1966). Moreover, it is well settled that there is more than one way in which employees of a given employer may appropriately be grouped for purposes of collective bargaining. See Capital Bakers, Inc., 168 NLRB 904, 905 (1967).

In determining the appropriateness of a petitioned-for unit, the issue is whether the employees share a community of interest. See NLRB v. Action Automotive, Inc., 469 U.S. 490, 494 (1985); Home Depot USA, *supra*. Appropriateness depends upon community of interest factors including, but not limited to, mutuality of wages, hours and working conditions; commonality of supervision; similarity in qualifications, training, skills and job functions; frequency of contact and interchange; and functional integration. See Home Depot USA, *supra*; Ore-Ida Foods, 313 NLRB 1016 (1994); Kalamazoo Paper Box Corporation, 136 NLRB 134, 137 (1962). While a union's interest in representing a particular unit is relevant, it is not dispositive. See E.H. Koester Bakery & Co., 136 NLRB 1006 (1962). If the petitioned-for unit is not appropriate, the Board may examine alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See Overnite Transportation Co., 331 NLRB 662 (2000); Bartlett Collins Co., *supra*.

Upon review of the record, for the reasons discussed below, I conclude that the petitioned-for bargaining unit is an appropriate bargaining unit, and that the warehouse department and meat department employees should be excluded from the bargaining unit because they do not share a community of interest with employees in the petitioned-for unit. Although it is undisputed that the Employer's drivers do share a number of common benefits, terms, and conditions of employment with the Employer's other employees and have some degree of interaction with other employees, the record establishes that these similarities are substantially outweighed by the factors supporting a conclusion that the drivers as a group share a distinct community of interest.



Drivers, warehouse department and meat department employees possess distinct skills and qualifications, are subject to different working conditions, and are assigned different job duties. Unlike other employees, drivers are required to maintain a commercial driver's license and a Department of Transportation certification. Drivers are also responsible for completing invoices and paperwork, while collecting money from customers for payment of delivered products. Warehouse department and meat department employees are not responsible for these job duties. The record also shows that drivers are prohibited from going into the warehouse to obtain missing products for their trucks in the morning, or storing returned products at the end of their runs, as this work is reserved for warehouse employees. These significant differences in working conditions and the divergence in skills demonstrate that the drivers possess a separate community of interest from warehouse department and meat department employees. See Home Depot USA, supra.

The record also establishes that drivers do not report to the same immediate supervisor as warehouse department and meat department employees. Drivers receive their vacations and evaluations from their immediate supervisor, and attend department meetings only with other drivers. Record testimony also establishes that drivers are to report any problems that arise during their route to their immediate supervisor. This separate supervision further demonstrates a separate community of interest. See Overnight Transportation Co., 325 NLRB 612 (1998); Overnight Transportation Co., 322 NLRB 347, 347-348 (1996).

The record further establishes that contact between drivers and the Employer's other employees is minimal, as drivers are only at the warehouse for approximately one hour in the morning, while the remaining time is spent on the road. While there is some evidence that other employees ride with drivers, the only record testimony regarding the frequency of the "ride-alongs" establishes that this has occurred only two or three times in the last six months.

Moreover, there is no record evidence that other employees drive the trucks when they ride along with drivers.

The Employer, in its post-hearing brief, cites Napa Columbus Parts Co., 269 NLRB 1052 (1984), in support of its position that warehouse department and meat department employees should be included in the bargaining unit.<sup>8</sup> In Napa Columbus, the Board found, in part, that the employer's delivery drivers should be included in a bargaining unit that contained warehouse employees, because there was a sufficient community of interest between the two job classifications. In support of its conclusion, the Board noted that drivers were immediately supervised by the same manager that supervised approximately 70 percent of warehouse employees. The Board also noted that drivers spend one to one and a half hours daily at the loading platform, where they work with warehouse employees on a daily basis sharing the duties of loading the trucks. The Board also found extensive evidence of permanent transfers, as 9 of the 10 drivers were formerly warehouse or local store employees.<sup>9</sup> Finally, the Board found a high degree of temporary interchange between warehouse employees and delivery drivers, as warehouse employees are frequently required to substitute for the regular delivery drivers.

The instant case is distinguishable from Napa Columbus. As noted above, drivers, warehouse department employees and meat department employees have separate immediate supervisors. The record also establishes that drivers do not share any loading duties with warehouse employees. In fact, drivers are prohibited from going into the warehouse to load missing products onto their trucks. The record also shows that there have been only two examples of permanent transfers in the instant case. In these instances, which occurred two or three years ago, the record establishes that the two drivers, who permanently transferred to the warehouse department, did so because they could no longer drive for the Employer. Finally,

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<sup>8</sup> In its post-hearing brief, the Employer cites to this case as Genuine Parts Company.

<sup>9</sup> The Board also found that local store employees should be included in the same bargaining unit.

there is no evidence of temporary interchange between drivers and warehouse department and meat department employees.

Thus, upon review of the community of interest factors, and noting the drivers separate supervision, duties and skills, I conclude that the petitioned-for unit is appropriate and that warehouse department and meat department employees should be excluded from the appropriate bargaining unit found herein.

There are approximately 21 employees in the appropriate bargaining unit.

### **CONCLUSION**

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time drivers employed by the Employer at its Rochester, New York facility; excluding, the distribution manager, warehouse manager, meat department manager, warehouse department employees, meat department employees, fish and retail department employees, office clerical employees, and all managerial employees, professional employees, guards and supervisors as defined in the Act.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as replacements are eligible to vote. Those in the

military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 791**.

### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by SEIU Local 200 United with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received in the Thaddeus J. Dulski Federal Building, 111 West Huron Street, Room 901, Buffalo, New York 14202 on or before **September 8, 2005**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

## **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **September 15, 2005**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: [www.nlrb.gov](http://www.nlrb.gov).

**DATED** at Buffalo, New York this 1st day of September, 2005.

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**HELEN E. MARSH** Regional Director  
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